



General Assembly

**Substitute Bill No. 785**

January Session, 2009

\* \_\_\_\_\_SB00785PD\_\_\_\_\_032309\_\_\_\_\_\*

**AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-158j of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3 (a) Each construction contract shall contain the following  
4 provisions: (1) A requirement that the owner pay any amounts due  
5 any contractor, subcontractor or supplier in a direct contractual  
6 relationship with the owner, whether for labor performed or materials  
7 furnished, not later than thirty days after the date any written request  
8 for payment has been made by such contractor, subcontractor or  
9 supplier; (2) a requirement that the contractor pay any amounts due  
10 any subcontractor or supplier, whether for labor performed or  
11 materials furnished, not later than thirty days after the date the  
12 contractor receives payment from the owner which encompasses labor  
13 performed or materials furnished by such subcontractor or supplier;  
14 and (3) a requirement that the contractor shall include in each of its  
15 subcontracts a provision requiring each subcontractor and supplier to  
16 pay any amounts due any of its subcontractors or suppliers, whether  
17 for labor performed or materials furnished, not later than thirty days  
18 after the date such subcontractor or supplier receives a payment from  
19 the contractor which encompasses labor performed or materials  
20 furnished by such subcontractor or supplier.

21     (b) Each payment made in accordance with the requirements of  
22 subsection (a) of this section shall include a statement showing the  
23 status of all pending construction change orders, other pending change  
24 directives and approved changes to the original contract or  
25 subcontract. Such statement shall identify the pending construction  
26 change orders and other pending change directives, and shall include  
27 the date such change orders and directives were initiated, the costs  
28 associated with their performance and a description of the work  
29 completed.

30     ~~[(b)]~~ (c) (1) If payment is not made by an owner in accordance with  
31 the requirements of subdivision (1) of subsection (a) of this section or  
32 any applicable construction contract, such contractor, subcontractor or  
33 supplier shall set forth its claim against the owner through notice by  
34 registered or certified mail.

35     (2) If payment is not made by a contractor in accordance with the  
36 requirements of subdivision (2) of subsection (a) of this section or any  
37 applicable construction contract, the subcontractor or supplier shall set  
38 forth its claim against the contractor through notice by registered or  
39 certified mail.

40     (3) If payment is not made by a subcontractor or supplier in  
41 accordance with the provisions of subdivision (3) of subsection (a) of  
42 this section, the subcontractor or supplier to whom money is owed  
43 shall set forth its claim against the subcontractor or supplier who has  
44 failed to comply with the provisions of said subdivision (3) through  
45 notice by registered or certified mail.

46     (4) Ten days after the receipt of any notice specified in subdivisions  
47 (1), (2) and (3) of this subsection, the owner, contractor, subcontractor  
48 or supplier, as the case may be, shall be liable for interest on the  
49 amount due and owing at the rate of one per cent per month. Such  
50 interest shall accrue beginning on the date any such notice is received.  
51 In addition, such owner, contractor, subcontractor or supplier, upon  
52 written demand from the party providing such notice, shall be

53 required to place funds in the amount of the claim, plus such interest  
54 of one per cent per month, in an interest-bearing escrow account in a  
55 bank in this state, provided such owner, contractor, subcontractor or  
56 supplier may refuse to place the funds in escrow on the grounds that  
57 the party making such demand has not substantially performed the  
58 work or supplied the materials according to the terms of the  
59 construction contract. In the event that such owner, contractor,  
60 subcontractor or supplier refuses to place such funds in escrow and  
61 such owner, contractor, subcontractor or supplier is found to have  
62 unreasonably withheld payment due a party providing such notice,  
63 such owner, contractor, subcontractor or supplier shall be liable to the  
64 party making demand for payment of such funds and for reasonable  
65 attorneys' fees plus interest on the amount due and owing at the rate of  
66 one per cent per month. In addition, any owner, contractor,  
67 subcontractor or supplier who is found to have withheld payments to  
68 a party providing such notice in bad faith shall be liable for ten per  
69 cent damages.

70 [(c)] (d) No payment may be withheld from a subcontractor or  
71 supplier for work performed or materials furnished because of a  
72 dispute between a contractor and another contractor, subcontractor or  
73 supplier.

74 [(d)] (e) This section shall not be construed to prohibit progress  
75 payments prior to final payment of the contract and is applicable to all  
76 subcontractors and suppliers for material or labor whether they have  
77 contracted directly with the contractor or with some other  
78 subcontractor on the work. Each owner that enters into a contract  
79 under this section and fails or neglects to make payment to a  
80 contractor for labor and materials supplied under a contract, as  
81 required pursuant to this section, shall, upon demand of any person  
82 who has not been paid by the contractor for such labor and materials  
83 supplied in the performance of the work under the contract, promptly  
84 pay the person for such labor or materials. Demand for payment shall  
85 be served on the owner and a copy of each demand shall be sent to the

86 contractor by certified mail, return receipt requested to any address at  
87 which the owner and contractor conduct business. If the owner fails to  
88 make such payment, the person shall have a direct right of action  
89 against the owner in the superior court for the judicial district in which  
90 the project is located. The owner's obligations for direct payments to  
91 the contractor, subcontractors or suppliers giving notice pursuant to  
92 this section shall be limited to the amount owed to the contractor by  
93 the owner for work performed under the contract at the date such  
94 notice is provided.

95 Sec. 2. Section 49-41a of the general statutes is repealed and the  
96 following is substituted in lieu thereof (*Effective July 1, 2009*):

97 (a) When any public work is awarded by a contract for which a  
98 payment bond is required by section 49-41, the contract for the public  
99 work shall contain the following provisions: (1) A requirement that the  
100 general contractor, within thirty days after payment to the contractor  
101 by the state or a municipality, pay any amounts due any subcontractor,  
102 whether for labor performed or materials furnished, when the labor or  
103 materials have been included in a requisition submitted by the  
104 contractor and paid by the state or a municipality; (2) a requirement  
105 that the general contractor shall include in each of its subcontracts a  
106 provision requiring each subcontractor to pay any amounts due any of  
107 its subcontractors, whether for labor performed or materials furnished,  
108 within thirty days after such subcontractor receives a payment from  
109 the general contractor which encompasses labor or materials furnished  
110 by such subcontractor.

111 (b) Each payment made in accordance with the requirements of  
112 subsection (a) of this section shall include a statement showing the  
113 status of all pending construction change orders, other pending change  
114 directives and approved changes to the original contract or  
115 subcontract. Such statement shall identify the pending construction  
116 change orders and other pending change directives, and shall include  
117 the date such change orders and directives were initiated, the costs  
118 associated with their performance and a description of the work

119 completed.

120 [(b)] (c) If payment is not made by the general contractor or any of  
121 its subcontractors in accordance with such requirements, the  
122 subcontractor shall set forth his claim against the general contractor  
123 and the subcontractor of a subcontractor shall set forth its claim  
124 against the subcontractor through notice by registered or certified  
125 mail. Ten days after the receipt of that notice, the general contractor  
126 shall be liable to its subcontractor, and the subcontractor shall be liable  
127 to its subcontractor, for interest on the amount due and owing at the  
128 rate of one per cent per month. In addition, the general contractor,  
129 upon written demand of its subcontractor, or the subcontractor, upon  
130 written demand of its subcontractor, shall be required to place funds in  
131 the amount of the claim, plus interest of one per cent, in an interest-  
132 bearing escrow account in a bank in this state, provided the general  
133 contractor or subcontractor may refuse to place the funds in escrow on  
134 the grounds that the subcontractor has not substantially performed the  
135 work according to the terms of his or its employment. In the event that  
136 such general contractor or subcontractor refuses to place such funds in  
137 escrow, and the party making a claim against it under this section is  
138 found to have substantially performed its work in accordance with the  
139 terms of its employment in any arbitration or litigation to determine  
140 the validity of such claim, then such general contractor or  
141 subcontractor shall pay the attorney's fees of such party.

142 [(c)] (d) No payment may be withheld from a subcontractor for  
143 work performed because of a dispute between the general contractor  
144 and another contractor or subcontractor.

145 [(d)] (e) This section shall not be construed to prohibit progress  
146 payments prior to final payment of the contract and is applicable to all  
147 subcontractors for material or labor whether they have contracted  
148 directly with the general contractor or with some other subcontractor  
149 on the work.

150 Sec. 3. Subsection (a) of section 49-42 of the general statutes is

151 repealed and the following is substituted in lieu thereof (*Effective July*  
152 *1, 2009*):

153 (a) Any person who performed work or supplied materials for  
154 which a requisition was submitted to, or for which an estimate was  
155 prepared by, the awarding authority and who does not receive full  
156 payment for such work or materials within sixty days of the applicable  
157 payment date provided for in subsection (a) of section 49-41a, as  
158 amended by this act, or any person who supplied materials or  
159 performed subcontracting work not included on a requisition or  
160 estimate who has not received full payment for such materials or work  
161 within sixty days after the date such materials were supplied or such  
162 work was performed, may enforce such person's right to payment  
163 under the bond by serving a notice of claim on the surety that issued  
164 the bond and a copy of such notice to the contractor named as  
165 principal in the bond not later than one hundred eighty days after the  
166 last date any such materials were supplied or any such work was  
167 performed by the claimant. For the payment of retainage, as defined in  
168 section 42-158i, such notice shall be served not later than one hundred  
169 eighty days after the applicable payment date provided for in  
170 subsection (a) of section 49-41a, as amended by this act. The notice of  
171 claim shall state with substantial accuracy the amount claimed and the  
172 name of the party for whom the work was performed or to whom the  
173 materials were supplied, and shall provide a detailed description of  
174 the bonded project for which the work or materials were provided. If  
175 the content of a notice prepared in accordance with subsection [(b)] (c)  
176 of section 49-41a, as amended by this act, complies with the  
177 requirements of this section, a copy of such notice, served not later  
178 than one hundred eighty days after the date provided for in this  
179 section upon the surety that issued the bond and upon the contractor  
180 named as principal in the bond, shall satisfy the notice requirements of  
181 this section. Not later than ninety days after service of the notice of  
182 claim, the surety shall make payment under the bond and satisfy the  
183 claim, or any portion of the claim which is not subject to a good faith  
184 dispute, and shall serve a notice on the claimant denying liability for

185 any unpaid portion of the claim. The notices required under this  
186 section shall be served by registered or certified mail, postage prepaid  
187 in envelopes addressed to any office at which the surety, principal or  
188 claimant conducts business, or in any manner in which civil process  
189 may be served. If the surety denies liability on the claim, or any  
190 portion thereof, the claimant may bring action upon the payment bond  
191 in the Superior Court for such sums and prosecute the action to final  
192 execution and judgment. An action to recover on a payment bond  
193 under this section shall be privileged with respect to assignment for  
194 trial. The court shall not consolidate for trial any action brought under  
195 this section with any other action brought on the same bond unless the  
196 court finds that a substantial portion of the evidence to be adduced,  
197 other than the fact that the claims sought to be consolidated arise  
198 under the same general contract, is common to such actions and that  
199 consolidation will not result in excessive delays to any claimant whose  
200 action was instituted at a time significantly prior to the motion to  
201 consolidate. In any such proceeding, the court judgment shall award  
202 the prevailing party the costs for bringing such proceeding and allow  
203 interest at the rate of interest specified in the labor or materials contract  
204 under which the claim arises or, if no such interest rate is specified, at  
205 the rate of interest as provided in section 37-3a upon the amount  
206 recovered, computed from the date of service of the notice of claim,  
207 provided, for any portion of the claim which the court finds was due  
208 and payable after the date of service of the notice of claim, such  
209 interest shall be computed from the date such portion became due and  
210 payable. The court judgment may award reasonable attorneys fees to  
211 either party if upon reviewing the entire record, it appears that either  
212 the original claim, the surety's denial of liability, or the defense  
213 interposed to the claim is without substantial basis in fact or law. Any  
214 person having direct contractual relationship with a subcontractor but  
215 no contractual relationship express or implied with the contractor  
216 furnishing the payment bond shall have a right of action upon the  
217 payment bond upon giving written notice of claim as provided in this  
218 section.

